

OFFICE OF LEGISLATIVE LIAISON
Routing Slip

TO:

	ACTION	INFO
1. D/OLL		X
2. DD/OLL		X
3. Admin Officer		
4. Liaison		X
5. Legislation	X	X
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SUSPENSE

29 Aug. 83

Action

Remark

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

83-1997

August 23, 1983

file: Terrorism
"98thLEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer

Department of Defense
Department of the Treasury
Department of Justice
National Security Council
~~Central Intelligence Agency~~

SPECIALSUBJECT: State Department views on Department of Justice
draft bill entitled "Acts of Terrorism"

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than cob September 2, 1983.

Questions should be referred to Gregory Jones (395-3856), the legislative analyst in this office.

8/2/83 telephone response - no objection to DoS letter James C. Murr for
- no objection to DoS draft bill - Assistant Director for
- referred OMB to Legislatiive Reference
Enclosures on DoS referred our views letter for CIA
our views letter for CIA
letter for CIA
views right to insulation

cc: [redacted]

K. Wilson

J. Barie

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United States Department of State

Washington, D.C. 20520

Jones

AUG 18 1983

Dear Mr. Stockman:

You have requested the views of the Department of State on the Department of Justice draft bill entitled "Acts of Terrorism".

The Department of State questions the utility and effectiveness of such an omnibus anti-terrorism bill. Omnibus bills on terrorism traditionally attract many amendments, most far afield from the intended purpose of the bill. It is because of such omnibus bills that the United States has not been able to implement its obligations undertaken pursuant to the Montreal Convention on aircraft sabotage even though it has been over a decade since it ratified the Convention. The Department of State does not foresee any better fate for an omnibus anti-terrorism bill this year. Representatives of the Department of Justice have indicated that that Department would consider introducing the various provisions of this bill as separate pieces of legislation.

Title I

The Department sees serious problems with each section of this title.

Section 101(a)

Sufficient thought has apparently not been given to proposed section 971. Subsection (a) would impose greater penalties on a person who conspires to commit a designated act than on a person who commits such an act: the penalty for conspiring to murder is greater than that for murder in section 1116, that for conspiring to kidnap is greater than that for kidnapping in section 1201, and that for conspiring to assault is greater than that for assault in section 112.

The Honorable
David A. Stockman,
Director,
Office of Management and Budget.

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In addition, the definition of "official of a foreign power" adds an unnecessary and complicating category to the class of persons protected by United States law. The categories of "foreign officials," "official guests," and "internationally protected persons" already exist under section 1116 of Title 18 and are utilized in various other provisions of Title 18, e.g., sections 112, 878, 970, and 1201. Moreover, this proposed category does not fully cover those persons which the United States has an obligation to protect.

To some extent section 971 would be redundant since conspiracy provisions already exist dealing with murders or kidnapings of "internationally protected persons" pursuant to section 1117 and section 1201(c), respectively.

Section 102

This section would amend section 951 on conspiracies to injure property of foreign governments. Chapter 45, within which section 951 falls, is part of the U.S. neutrality laws and the Department of State questions the inclusion of an amendment to the neutrality laws in an anti-terrorism bill.

This proposal would make two changes about which the Department has concerns. First and foremost, it would eliminate the requirement of present section 951 that an overt act to effect the object of the conspiracy be committed "within the jurisdiction of the United States." This section was inserted by the Congress in 1948 to ensure that section 951 would only be used to prosecute conspiracies with a direct link to the United States. This amendment would change the very thrust of the law as Congress intended it to be applied. We question if this would be wise.

In addition, the proposal would prohibit attacks on the property of a "foreign government . . . with which the United States is not at war." Other references in similar neutrality laws, e.g., sections 958, 960, 961, and 962, and the present version of 956, refer to a "foreign government with which the United States is at peace." We suggest that the present language be retained.

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Title II

Section 201(a)

Proposed section 972 is largely unnecessary. As the Department has informed the Justice Department, amendments to the International Traffic in Arms Regulations (ITAR), which would be made by the Secretary of State and be published in the Federal Register, are in the final stages of preparation. These amendments would expand the prohibitions of the ITAR to cover virtually all the offenses which proposed section 972 would cover. The Department does not wish this issue to be placed before the Congress for it to pass on in light of the changes which will soon be effected.

Moreover, the Department objects to the provision of proposed section 972 which would require the President to make certain findings related to a country's or group's support of terrorism before the section would be effective. The Department objected to a similar proposal in testimony before the Congress last session on S. 2255. Besides the fact that the object of the proposed section would be achieved by the aforementioned amendments to the ITAR without the need for a Presidential finding, the Department believes that an additional list relating to terrorism based on criteria different from those used in the existing lists would impose an unnecessary burden on the President.

Section 201(c)

This section is unnecessary in light of the fact that section 972 itself is not necessary.

Section 202

This proposal, which deals with impersonating a member of the Intelligence Community, more appropriately belongs in a bill on intelligence matters. It is unrelated to the purpose at hand.

Title III

The Department of State finds proposed Title III to be unrelated to the problem of paying rewards for information concerning international terrorism.

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A drafting group of the Interdepartmental Group on Terrorism (IG/T) had developed draft legislation on this subject in January 1983 which was acceptable to the Departments of State, Justice, Defense and Treasury and which adequately dealt with the realities of a situation in which a reward for information concerning an act of international terrorism would be appropriate. That legislation was submitted to your office for government-wide clearance in early February. The Department of State continues to believe that that legislation is far better suited than proposed Title III to deal with situations of rewards for information concerning international terrorism.

The aspects of the legislation drawn up under the aegis of the IG/T which make it preferable to proposed Title III can be easily summarized. As a preface, it should be clearly understood that the Attorney General already possesses authority to pay rewards for acts of terrorism which are violations of United States law pursuant to 18 U.S.C. 3059. This would be in accordance with the Attorney General's presumed superior knowledge of the facts and circumstances surrounding violations of domestic law. Therefore, there is no need for specialized legislation on rewards for information concerning acts of terrorism which violate U.S. law.

The Department of State does not believe there is any reason why the Attorney General, who would have no information relative to an act of international terrorism which is not a violation of United States law, should decide on the payment of rewards for information in such cases. The experience of the Department of State demonstrates that the Secretary of State, and not the Attorney General or the Secretary of Defense, would possess information relative to acts of international terrorism which are not violations of United States law. Neither the Attorney General nor the Secretary of Defense would have access to such information and indeed neither would have a need to know such information. The Secretary of State, who is responsible for the conduct of foreign affairs, is the appropriate official to act on incidents of international terrorism. The Attorney General's knowledge of the efficacy of paying rewards in certain cases would lead to the conclusion that he should play an advisory role in decisions of the Secretary of State.

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In sum, the Department of State believes that there is no need to propose any legislation dealing with authority to pay rewards for acts of terrorism which are violations of U.S. law since such authority already exists. Legislation on the payment of rewards for information concerning acts of international terrorism which are not violations of U.S. law should follow the version drafted under the auspices of the IG/T in January of this year and submitted for clearance in February.

Title IV

It has been over ten years since the United States undertook certain obligations to amend its laws by ratifying the Montreal Convention on aircraft sabotage. Those obligations have not been discharged because of the perennial inclusion of the Montreal implementing legislation in omnibus anti-terrorism bills. The Department of State believes that these serious obligations have been outstanding long enough and that the U.S. Government should bend its efforts to ensure that we comply with our treaty obligations this year. Informal consultations with the appropriate House Subcommittee indicate that an implementing bill would have excellent chances of passage if it were unencumbered by irrelevant ancillary provisions. These considerations lead the Department of State to believe that the implementing legislation for the Montreal Convention should be introduced as a separate piece of legislation.

When these views were expressed to representatives of the Department of Justice at a recent IG/T meeting they expressed no objection to separate submission of such legislation and agreed to consider removal of this title from the draft bill.

The Department has no serious substantive problem with the legislation which the Justice Department is proposing. However, we have submitted a version of the legislation to your office for clearance on June 8 which we believe is better in certain respects than the Justice version. An appropriate official from the Department's Office of the Legal Adviser could discuss the relevant points with officials from the Justice Department and the Federal Aviation Administration with a view to adopting a unified draft.

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Title V

Sections 502 and 503

The Department of State does not wish to repeat the experience of the long delay in implementing the Montreal Convention with its ratification of the Hostages Convention. The Senate has given its advice and consent to the President's ratification and President Reagan has signed the instrument of ratification for the Hostages Convention. However, the Department of State has delayed depositing the instrument of ratification pending adoption of implementing legislation.

The Hostages Convention is the only anti-terrorism convention which the United States has not ratified. The delay is entirely due to the absence of implementing legislation. The Department believes that the legislation would stand the best chance of passage in this Congress if it were introduced as a separate piece of legislation. Linkage to the Montreal implementing legislation or some other piece of anti-terrorism legislation would signal that the Administration was not interested in expeditious consideration which focussed solely on the merits of implementing a treaty to which the Senate has already given its advice and consent. Therefore, the Department of State believes that legislation to implement the Hostages Convention should be introduced as a separate piece of legislation.

When these views were expressed to representatives of the Department of Justice at a recent IG/T meeting they expressed no objection to separate submission of such legislation and agreed to consider removal of this title from the draft bill.

The Department has no serious substantive problem with the legislation which the Justice Department is proposing. However, we have submitted a version of the legislation to your office for clearance on June 8 which we believe is better in certain respects than the Justice version. An appropriate official from the Department's Office of the Legal Adviser could discuss the relevant points with officials from the Justice Department with a view to adopting a unified draft.

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Section 504

The Department of State has previously objected to inclusion in draft legislation implementing the Hostages Convention of this provision which would expand wiretap authority. There is no need to reiterate the arguments which have been made for streamlined, separate pieces of legislation on terrorism. It should be sufficient to point out that such a provision has since been included as Part B of Title XVI of the Administration's Comprehensive Crime Control Act of 1983. In light of its very appropriate inclusion in legislation already before the House and Senate dealing with general reform of the criminal laws, the Department of State must object to its inclusion as a rider to legislation to implement the Hostages Convention.

As you know, on August 9, 1983, the National Security Adviser sent a memorandum on counter-terrorism to the Secretary of State with a copy to you. In light of the emphasis in that memorandum on early implementation of the Montreal Convention and the Hostages Convention, as well as the adoption of legislation authorizing the payment of rewards for information concerning international terrorism, it appears to be appropriate that separate pieces of legislation on these subjects be moved forward as quickly as possible.

Sincerely,



Alvin Paul Drischler
Acting Assistant Secretary
Legislative and Intergovernmental Affairs